



# புதுச்சேரி மாநில அரசிதழ்

## La Gazette de L'État de Poudouchéry The Gazette of Puducherry

அதிகாரம் பெற்ற வெளியீடு

Publiée par Autorité

Published by Authority

விலை : ₹ 22-00

Prix : ₹ 22-00

Price : ₹ 22-00

எண்	புதுச்சேரி	செவ்வாய்க்கிழமை	2017 ஆ	அக்டோபர் மீ	10 உ
No.	41 Poudouchéry	Mardi	10	Octobre	2017 (18 Asvina 1939)
No.	Puducherry	Tuesday	10th	October	2017

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## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G. O. Rt. No. 132/Lab./AIL/T/2017,  
Puducherry, dated 21st August 2017)

## NOTIFICATION

Whereas, an Award in I.D (L) No. 36/1999, dated 30-6-2017 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Curio Centre, Puducherry and the Secretary, Curio Centre Worker's Union, Mudaliarpur, Puducherry over reinstatement of 32 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L., dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

**A. RAJARATHINAM,**

Under Secretary to Government (Labour).

**BEFORE THE INDUSTRIAL TRIBUNAL -CUM-  
LABOUR COURT AT PUDUCHERRY**

*Present* :Thiru G. THANENDRAN, B.COM., M.L.,  
Presiding Officer.

*Friday, the 30th day of June 2017.*

**I.D. (L) No. 36/1999**

Secretary,  
Curio Centre Workers' Union,  
Bharathi Mill Thittu,  
Mudaliarpur, Puducherry. . . Petitioner

*Versus*

The Manager,  
Curio Centre,  
No. 26, Romain Rolland Street,  
Puducherry. . . Respondent

This industrial dispute coming up before me for final hearing on 14-6-2017 in the presence of Thiru R.T. Shankar, Counsel for the petitioner, Thiru P. Rabindran, Advocate for the respondent, upon hearing- both sides, upon perusing the case records, after having stood over for consideration till this day, this Court passed the following:

## AWARD

1. This industrial dispute has been referred by the Government as per the G. O. Rt. No. 140/99/LAB/L/1999, dated 2-11-1999 for adjudicating the following:-

(i) Whether the demand of the Curio Centre Workers' Union that the workers mentioned hereunder should be reinstated by the management of Curio Centre, Pondicherry is justified? If so, to give appropriate directions.

Thiruvallur:

- (1) R. Damodaran
- (2) Sakthisivam
- (3) A. Elumalai
- (4) Desingu
- (5) Murugesan
- (6) Manimaran
- (7) Tamil Selvan
- (8) Karunakaran
- (9) Manivannan
- (10) B. Velmurugan
- (11) Dhandapani
- (12) Ariputhri
- (13) D. Baskar
- (14) N. Baskar
- (15) Suresh
- (16) Raja
- (17) Murugan
- (18) Palani
- (19) Arulprakasam
- (20) Sankar
- (21) Mani
- (22) Kumaran
- (23) A. Xavier
- (24) T. Mohan
- (25) Sandanaraj
- (26) Anbazhagan
- (27) Elangovan
- (28) Ramamurthy
- (29) Vinayagam
- (30) Anand
- (31) Raji
- (32) Raja

(ii) To compute the relief if any, awarded in terms of money if, it can be so computed?

2. In this case, already the enquiry was conducted by this Tribunal and no oral evidence was let in by either sides and however on the side of the petitioner Ex.A1 to Ex.A22 were marked on consent and on the side of the respondent Ex.R1 to Ex.27 were marked on consent and after the enquiry and hearing the argument of both sides, an Award has been passed by this Tribunal on 5-3-2003 in favour of the petitioner union against which the respondent management has filed a Writ petition in W.P.M.P. No. 26423 of 2004 and W.V.M.P.No. 1027 of 2005 and the Hon'ble High Court as pleased to set aside the order of this Court and remanded this case to this Tribunal reconsider the claim of the workmen afresh as per law and with instruction to the petitioner to let in oral evidence and if, there is no documentary evidence or documentary evidence is insufficient, since no oral evidence was adduced on behalf of the petitioner as well as the respondent on the earlier enquiry conducted before this Court.

3. As per the order of the Hon'ble High Court, the case has been remanded back to this Tribunal and additional claim statement was filed by the petitioner with the permission of this Court for which additional counter was filed by the respondent management and posted for taking evidence of both sides, on the side of the petitioner PW.1 and PW.2 were examined and Ex.A1 to A59 were marked and on the side of the respondent RW.1 was examined and Ex.B28 to Ex.B54 were marked.

4. The point for consideration is-

whether the dispute raised by the petitioner union against the respondent management over their non-employment is justified or not and whether the petitioners are entitled for the relief as claimed by them?

5. Both side arguments were heard. The submission of both the parties, the claim statement and additional claim filed by the petitioner and the counter statement and additional counter statement filed by the respondent, the evidence let in by either sides and the exhibits marked on both sides are carefully considered. The learned Counsel for the petitioner has filed the written argument and in support of his case the learned Counsel for the petitioner has relied upon the judgment in Civil Appeal No. 2585/2006 wherein, the Hon'ble Supreme Court has observed that,

".....in the present case that is not the question at all. Here the finding of fact of the Labour Court is that the respondents were not the contractor's employees but, were the employees of the appellant.

The SAIL judgment (Supra) applies were the employees were initially employees of the contractor and later claim to be absorbed in the service of the principal employer. That judgment was considering the effect of the notification under section 10 of the Act. That is not the case here. Hence, that decision is clearly distinguishable."

The learned Counsel for the respondent has filed the written argument and in support of his case the learned Counsel for the respondent also has relied upon the following judgments:

(i) AIR 2004 SC 1639 wherein, the Hon'ble Supreme Court of India has observed that,

".....It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

(ii) In *N.C. John Vs Secretary, Thodupuzha Taluk Shop and Commercial Establishment Workers' Union and others* (1973 Lab IC 398), wherein, the Kerala High Court held that,

"the burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if, he were to produce books of accounts they would have proved employer-employee relationship."

(iii) In *Swapan Das Gupta and others Vs The First Labour Court of West Bengal and others* (1976 Lab IC 202) it has been held:

"where a person asserts that he was a workman of the Company, and it is denied by the Company, it is for him to prove the fact. It is not for the Company to prove that he was not an employee of the Company but of some other person.....The question whether the relationship between the parties is one of the employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse."

".....having regard to the aforementioned findings, we are of the opinion, the High Court has rightly affirmed the Award of the Industrial Tribunal. The Tribunal as also the High Court further rightly arrived at a finding to the effect that the concerned workmen were not able to discharge their burden of proof that they were employed by the Society."

(iv) In *Gopa Vs. Bharat Sanchar Nigam Limited*, on 3-7-2014, wherein, the Hon'ble Delhi High Court has observed that,

“.....the first question which arises for consideration is whether there was employer-employee relationship between the appellant and the respondent? The appellant claims to have joined the respondent in July 1994 at the post of the Guard but has no proof of appointment such, as appointment letter, salary slip, *etc.* The respondent disclosed in its written statement that BSNL was not even created in 1994. Despite that the appellant disposed in his evidence by way of affidavit that he joined in July 1994 which is not possible. However, in cross-examination, the appellant stated that he joined in 1996. The appellant has also not given the particulars of the places of posting from 1994 to 2002. The respondent being a Government Corporation cannot appoint any person without issuing proper appointment letters and cannot make payments without a salary slip. We, therefore, hold that there was no employer-employee relationship between the appellants and the respondent.”

(v) In AIR 2005 SC 2179, wherein, the Hon'ble Supreme Court of India has observed that,

“.....the initial burden of proof was on the workmen to show that they had completed 240 days of service”.

“.....in *Range Forest Officer Vs. S.T. Hadimani* (2002) 3 SCC 25, It was stated ..... in our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but, this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order of record of appointment or engagement for this period was produced by the workman. On this ground alone, the Award is liable to be set aside.”

(vi) In 2002(2) Supreme 58, wherein, the Hon'ble Supreme Court of India has observed that

“.....in our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but, this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order of record of appointment or engagement for this period was produced by the workman. On this ground alone, the Award is liable to be set aside.”

6. It is learnt from the records that this case has been disposed by this Tribunal on 5-3-2003 and an Award has been passed in favour of the petitioner and against which the Writ application has been filed by the respondent management before the Hon'ble High Court in which the Award passed by this Tribunal on 5-3-2003 was set aside and the case has been remanded back before this Court for disposal by taking evidence of both parties afresh.

7. It is the case of the petitioner union that the respondent management is engaged in the business of buying and selling the wooden articles by renovating the old articles and has engaged in various places such as at Door No.27, Kamaraj Salai, 33rd Cross street at Rainbow Nagar, Door No.9, 8th Cross, Rainbow Nagar and also at Pappanchavady. The workers engaged by the respondent were more than 100. They formed a trade union under the name and style of Curio Centre Workers Union and applied for registration. Sensing the formation of the trade union, the workers who were working at Door No.27, Kamaraj Salai were made to face non-employment and hence, the petitioner have raised the industrial dispute before the Conciliation Officer on 3-6-1996 by sending a telegram and on the intervention of the Conciliation Officer the unit which was closed was reopened with effect from 11-3-1996 and the Secretary of the trade union Damodaran was not given re-employment and other workers, the petition mentioned employees were also not given re-employment and they have been orally terminated and the act of the respondent management is in violation of the section 33(1)(a)(b) of the Industrial

Disputes Act and that they have been terminated from the service while the industrial dispute was pending before the Conciliation Officer which is a clear violation of provisions of the Industrial Disputes Act and it is the further case of the petitioner that the respondent management has denied them as workers of the respondent establishment and that the trade union, was properly registered before the registration of trade union and that therefore, they have sought for the order of reinstatement of the workers and in support of the contention, the petitioner have marked Ex.A1 to Ex.A59.

8. On perusal of documents exhibited by the petitioner, Ex.A1 is the copy of the telegram sent by the petitioner trade union to the Labour Officer (Conciliation) with the telegraphic receipt. Ex.A2 is copy of the notice of enquiry of the Labour Officer (Conciliation) to the petitioner trade union. Ex.A3 is the copy of the representations of the workers namely, R. Velmurugan, S. Natarajan and K. Ramadoss for reinstatement in service to the respondent. Ex.A4 is the copy of the representation of the petitioner trade union to the respondent. Ex.A5 is the copy of the failure report of the Labour Officer (Conciliation). Ex.A6 is the copy of the enquiry proceedings. Ex.A7 is the copy of notification. The above Exs.A1 to A7 would reveal the fact that there was some industrial dispute raised by the petitioner union before the Conciliation Officer and the union has made some representations before the respondent management for their reinstatement and the trade union has made some demand with the respondent and the fact that the conciliation was failed after due enquiry and subsequently the reference has been made to this Court. Further, Ex.A8 is the copy of the advertisement published in the Daily Thanthi given by the respondent Calling for applications from carpenters and carpenter helpers. Ex.A9 is the copy of the Article published in Dina Malar Daily, regarding the arrest of the petitioners along with the union leaders. Ex.A10 is the copy of the Form-A application for registration of trade union. Ex.A11 is the copy of Certificate of registration of the petitioner trade union. Ex.A12 is the copy of the letter of the petitioner trade union informing elected Office Bearers to the respondent management. Ex.A13 is the copy of the letter of the petitioner trade union to the respondent. The Exs.A8 to A13 would go to show that the said trade union was registered under the Trade union Act and it was informed by the trade union regarding the elected Office Bearers to the respondent management and that there was an advertisement in Dina Thanthi

Newspaper calling applications from the carpenters and helpers. Further, Ex.A14 is the copy of the three nos. of letters and three nos. of covers addressed to certain employees by the respondent management. Ex.A15 to Ex.A21 are the copy of the Interview card sent to the workers P. Balaramanan, A. Asokan S. Aridass on 27-6-1996 and to N. Krishnan and to A. Asokan on 11-12-1997 and to K. Purushothaman on 4-12-1997 and to A. Asokan on 23-12-1997 by the respondent. Ex.A22 is the copy of the positive print photograph of M/s. Sree Saiji Exports Private Limited. Ex.A23 is the copy of the letter issued by the respondent. Ex.A24 is the copy of the letter issued by the Labour Department. Ex.A25 is the copy of the resolution passed by the General Body meeting. Ex.A26 is the copy of the Annual returns for the year-2014. Ex.A27 is the copy of the Annual returns for the year-2015. Ex.A28 is the current letter head for the petitioner trade union. Ex.A29 is the copy of Registration Certificate of Petitioner trade union. Ex.A30 is the copy of Affiliation Certificate of the petitioner trade union. Ex.A31 to Ex.A41 are the copy of Aadhar Card of Sakthisivam, Elumalai, Desingu @ Arumugam, Velankanni @ Manimaran, Tamilselvan, Karunakaran, Manivannan, Murugan @ Velmurugan, Dhandapani, Ariputhiri, D. Baskar respectively, Ex.A43 to Ex.A47 are the copy of Aadhar card of Suresh, Raja, Murugan, Palani @ Pazanivel, Arulprakasam respectively, Ex.A50 to Ex.A52 are the copy of Aadhaar card of Kumaran, Xavier @ Francis Xavier and Mohan respectively, Ex.A54 to Ex.A59 are the copy of Aadhaar Card of Anbazhagan, Elangovan @ Elango, Ramamurthy, Vinayagam, Raji @ Susaimaryanathan, Raja @ Krishnan respectively. Ex.A42 is the copy of Voter Identity Card of Baskar @ Sukumaran. Ex.A48 is the copy of Voter Identity Card of Sankar @ Ravichandran. Ex.A49 is the copy of Voter Identity Card of Mani @ Dhandapani. Ex.A53 is the copy of Voter Identity Card of Sandanaraj. The Ex.A31 to Ex.A59 is the copies of the Aadhaar Card and Voter Identity Card of the reference mentioned workers.

9. It is the case of the respondent management that they have not engaged any workers directly for furniture works and the said work was done through the labour contractors and the reference mentioned workers are not the workers of the respondent establishment. The one of the worker Vairakannu referred in the claim petition is not a workman in the respondent establishment but, he is a workman in M/s. Shree Saiji Exports Private Limited, a sister concern of the respondent management and the said Vairakannu has raised an another industrial dispute

which was pending in I.D.No.11/2001 separately and the respondent establishment is only a proprietary concern and the sister concern M/s. Shree Saiji Exports Private Limited is a private limited company in which the sons of the Proprietor of the respondent establishment are the Directors and the respondent management has not committed any violation under section 33(1)(a) of the Industrial Disputes Act and the workmen are not the employees of the respondent establishment and that they have not committed any unfair labour practice as alleged by the petitioner union and it is the further contention of the respondent that the workers involved in the dispute were not the workers of the respondent Curio Centre and they were strangers and the respondent management has used to be entrusted to a worker on job-work basis and that there is no master and servant relationship between the respondent and the members of the petitioner union and that therefore, the dispute raised for the non-employment by the members of the petitioner union is not sustainable and that the members of the union gave strike notice and also threatened the conduct of the business by the respondent and hence, a suit in O.S.No. 1677/1996 was filed before the IADM Court against one Damodaran and 6 others, the union office bearers for permanent injunction and that there is no truth that the respondent has terminated the service of Damodaran on 10-3-1996 and he is also not the employee of the respondent and this respondent has even contended in the conciliation proceedings that the petitioners were not the workers of the respondent establishment Curio Centre and that therefore, since the members of the union were not the workers of the respondent establishment and there is no employer-employee relationship between them and there is no termination of their service by the respondent management at any time and that therefore, the application is liable to be dismissed and in support of the contention the respondent have marked Ex.B1 to B54.

10. On perusal of documents exhibited by the respondent, Ex.B1 is the copy of the register of Employment relating to the respondent organization. Ex.B2 is the copy of the attendance of the respondent firm. Ex.B3 is the copy of the Registration Certificate or renewal thereof relating to respondent firm with the Labour officer(Enforcement), Pondicherry. Ex.B4 is the copy of the certificate of registration with the Central Sales Tax Office. Ex.B5 is the copy of the Certificate of Registration in form-D1 issued by

the Deputy Commercial Tax Officer, Pondicherry. From Exs. B1 to B5, it is learnt to this Court that in the respondent management only three persons were working and they have maintained attendance register and their business was registered under State and Central Sales Taxes and their licence were renewed then and there with the Labour Enforcement Officer. Further, Ex.B6 is the copy of the complaint given by the respondent before the D'Nagar Police Station, Pondicherry. Ex.B7 is the copy of the complaint given by the respondent before the Odiansalai Police Station, Pondicherry. Ex.B8 is the copy of the letter given by the petitioner trade union to the respondent seeking reinstatement to service. Ex.B9 is the copy of complaint given by the respondent management to the Superintendent of Police (North). Ex.B10 is the copy of the complaint given by the respondent before the Grand Bazaar Police Station, Pondicherry. The Exs.B6 to 10 would reveal the fact that there was some complaint made by the respondent management against some of the members of the union that they are causing nuisance to them. Further Ex.B11 is the copy of the letter given by the respondent management to the Labour Officer (Conciliation). Ex.B12 is the copy of the letter given by the respondent management to the Labour Officer (conciliation). Ex.B13 is the copy of the failure report. Ex.B14 is the copy of the plaint filed by the respondent management before the IADM Court, Pondicherry in O.S. No. 1677/1996. Ex.B15 is the copy of the certificate of Incorporation of the company Shree Saiji Exports Private Limited with the Registrar of Companies, Pondicherry. Ex.B16 is the copy of the Permanent Registration Certificate issued by the Industries Department Pondicherry in favour of Shree Saiji Exports Private Limited Ex.B17 is the copy of certificate issued by the Industries Department, Government of Pondicherry in favour of Shree Saiji Exports Private Limited, Ex.B18 is the copy of Form-I issued by the Pondicherry Municipality of Shree Saiji Exports Private Limited, Ex.B19 is the copy of Certificate of Registration in Form-B by the commercial Tax Office in favour of Shree Saiji Exports Private Limited, Ex.B20 is the copy of certificate of registration in Form-D1 by the Commercial Tax Office in favour of Shree Saiji Exports Private Limited, Ex.B21 is the copy of the register showing the members of the ESI of the respondent firm. Ex.B22 is the copy of the register of wages of the respondent firm from December, 1995 to November, 1996. Ex.B23 is the copy of the work order issued by the respondent to one R. Lakshmanan. Ex.B24 is the copy of the work order issued by the respondent to one

R. Lakshmanan. Ex.B25 is the copy of the work order issued by the respondent to one Durai. Ex.B26 is the copy of the work order issued by the respondent to one Pitchai. Ex.B27 is the copy of the work order issued by the respondent to one Durai. Ex.B28 is the copy of the Award in I.D.No.11/2001. Ex.B29 is the copy of the Judgment in O.S. No.23/2007, Ex.B30 is the copy of the Decree in O.S. No. 23/2007. Ex.B31 is the copy of letter to Registrar of Trade Union. Ex.B32 is the copy of Register of Wages. Ex.B33 to Ex.B37 is the copy of work orders on various dates. Ex.B38 to Ex.B54 is the copy of work orders from the year 2000 to 2016. Among the above documents, Ex.B28 is the vital document which is the copy of an Award passed in I.D. No. 11/2001 by this Tribunal which would reveal the fact that while this union has raised the industrial dispute before the Conciliation Officer, one Vairakannu has also raised the industrial dispute before the Conciliation Officer and the reference was made by the Government to this Tribunal in I.D. No. 11/2001 and after the enquiry the same was dismissed by this Tribunal that the said Vairakannu has not established the employee-employer relationship against the respondent management and furthermore, Ex.B29 is also a vital document-copy of the Judgment in O.S.No. 23/2007 and Ex.B30 is the copy of the decree of the said suit which would evident that the Court has granted permanent injunction against the Secretary of the union restraining them from causing nuisance to the respondent establishment by conducting picketing and demonstration in the premises of the respondent establishment.

11. The main contention of the petitioner union is that they were working at the respondent establishment as carpenters and their employment was orally terminated by the respondent management since they have formed a trade union in the name of Curio Centre Workers' Union. On the other hand, it is the main contention of the respondent that the members of the petitioner union are not the workers of the respondent establishment and that there is no employee-employer relationship between the petitioner and the respondent management and that they have one sister concern in the name of M/s. Sree Saiji Exports Private Limited and they have done their work through the labour contractors and the respondent management is only the proprietary concern and the Directors of the M/s. Sree Saiji Exports Private Limited are the sons of the proprietor of the respondent establishment and the contract between the respondent establishment and the said Sree Saiji Exports Private Limited is sham and nominal.

12. On perusal of the records, it is learnt to this Court that even prior to the conciliation proceedings several complaints were lodged to the police and the Suit was filed before the IADM Court which would go to show that from the beginning of the industrial dispute raised by the petitioner even before the conciliation proceedings it is stated by the respondent management that these petitioners are the strangers and they have not engaged these petitioners in their establishment as workers. To establish their case the petitioners though have exhibited Ex.A1 to Ex.A59 they have not filed their appointment orders or salary slips or EPF slips or Identity Cards issued by the respondent management to the petitioners or any other communication made between the respondent establishment and the petitioner proving the fact that they were working at the respondent management at any point of time or any documents to prove that the petitioners have been in service of the respondent management. But it is established by them that they have formed a trade union and registered the same and that they have raised the industrial dispute before the Conciliation Officer and the conciliation was failed and on the recommendation of the Conciliation Officer the reference has been made by the Government to this Tribunal and it is also established by the petitioners that they have conducted several agitations and "tharnas" against the respondent management for their non-employment but, the documents filed by the petitioners do not evident that the petitioners were in service at the respondent establishment.

13. However, the petitioners have exhibited Ex.A14 which runs as follows :

"Sir, Greetings, we are sending our carpenter Damodaran to you as you wished with regards"

The above content of the letter reveals the fact that the respondent management has sent a letter to one of their customer stating that they are sending one Damodaran, their carpenter to do some work as the wishes of the customer. Ex.A15 to Ex.A21 are the postal cards which would evident that the postal cards has been addressed to 1. P. Balaraman, 2. A. Asokan, 3. S. Aridass, 4. N. Krishnan, 5. K. Purushothaman by M/s. Sree Saiji Exports Private Limited asking them to appear in a place on various dates for an interview as they have applied. These documents would evident that those persons were asked to appear for an interview by M/s. Sree Saiji Exports Private Limited and Sai Restoring Centre. But, these documents would not evident that the petitioner union members were

working at the respondent establishment of Curio Centre and further it is learnt from Ex.A15 to Ex.A21 that the abovesaid persons are not the reference mentioned employee of the respondent establishment since this industrial dispute was raised even long prior to the said interview and hence, it is clear that Ex.A15 to Ex.A21 is not in any way related to the reference mentioned employees and therefore, these documents are not connecting the reference mentioned workers with the respondent management. Further, Ex.A22 is the photograph of M/s. Sree Saiji Exports Private Limited, Ex.A23 is the copy of the letter issued by the respondent management which is copy of Ex.A14. The other documents Ex.A31 to Ex. A59 are the copy of Aadhaar Card and Voter Identity Card of the reference mentioned workers. But, these documents would not prove the fact that the petitioners were working at the respondent establishment.

14. Except Ex.A14 - letter, nothing is before this Court that the reference mentioned petitioner union members were working at the respondent management and Ex.A14 also does not reveal the fact that except the said Damodaran, others were working at the respondent management and furthermore, though the said Damodaran was mentioned as their carpenter that alone is not sufficient to prove that he was working at the respondent Curio Centre and hence, it is clear that the petitioners have totally failed to establish their claim that the petitioner union members were working at the respondent establishment for about two years as claimed by them and furthermore except the name of Damodaran no other document is exhibited before this Court by the petitioner union members that they have been in service at the respondent establishment at any point of time and further even in the claim petition they have failed to state what is the date of their appointment of each and every one and when each and every one have been terminated. No piece of evidence is before this Court to decide that these 32 workers were working at the respondent establishment as stated by them. Further, the evidence of PW.1 in his cross examination runs as follows :

“.....மனுதாரர் தொழிற்சங்கத்தின் தலைவராக நான் இருக்கவில்லை என்று சொன்னால் சரியல்ல. என்னுடன் சேர்த்து 32 தொழிலாளர்கள் எதிர்மனுதாரர் நிறுவனத்தில் வேலை செய்தார்கள் என்பதை காண்பிப்பதற்கு எந்த ஆவணமும் தாக்கல் செய்யவில்லை. எதிர்மனுதாரர் தரப்பில், ஏற்கனவே இந்த வழக்கின் விசாரணையின் போது, தாக்கல் செய்த ஆவணங்களை நான் பார்க்கவில்லை. எங்கள் தரப்பில் தற்போது 24 ஆவணங்கள் தாக்கல்

செய்யப்பட்டுள்ளது. நான் Ultra marine company-என்ற boat தயாரிக்கும் கம்பெனிக்கு போகவில்லை. நான் 1994-ம் வருடத்திலிருந்து எதிர்மனுதாரர் நிறுவனத்தில் வேலை பார்த்தேன். நான் எதிர்மனுதாரர் நிறுவனத்தில் வேலை செய்ததற்கான ஆவணம் Ex.W23 தாக்கல் செய்துள்ளேன். Ex.A23-ல் Damodharan என்ற carpenter-ரை அனுப்பி வைக்கிறோம் என்று உள்ளது. Ex.W23 என்னை எதிர்மனுதாரர் நிறுவனத்தில் பணிக்கு நியமித்ததாக குறிப்பு இல்லை. Ex.W23-யை தற்போது நடைபெறும் விசாரணையின் போது தான் தாக்கல் செய்திருக்கிறேன். Ex.B10 ஆவணம் என் மீதும் மற்றும் வேறு சில நபர்கள் மீதும் எதிர்மனுதாரர் நிறுவனம் 1996-ம் வருடம் Grand Bazaar Police Station-னில் complaint கொடுத்தார்கள். 28/5/1996 அன்று Odiansalai எங்களுக்கு எதிராக எதிர்மனுதாரர் நிறுவனம் ஒரு complaint தாக்கல் செய்தார்கள் என்றால் சரியல்ல .....நாங்கள் வேலை பார்த்த போது ESI, PF போன்றவை பிடித்தம் செய்யவில்லை, அதனால் எங்களிடம் அதற்கான ஆவணம் இல்லை. மனுதாரர் தொழிற்சங்கம் சட்டப்படி பதிவு செய்யப்படவில்லை என்று சொன்னால் சரியல்ல. சென்னை உயர்நீதிமன்றத்தில் பிறப்பிக்கப்பட்ட Writ petition 21081/2004 உத்தரவில், எங்கள் தரப்பில் சரியான சாட்சியம் முன் வைக்கப்படவில்லை என்பதால், மீண்டும் சாட்சியத்தை அளிப்பதற்கு ஒரு சந்தர்ப்பம் கொடுத்து, இந்த தொழிற்சாலாவை நடத்த உத்தரவிட்டுள்ளது என்றால் சரிதான். Writ petition 21081/2004 எதிரி உத்தரவில் பிறப்பிக்கப்பட்டது. எதிர்மனுதாரர் நிறுவனத்தில் வேலை செய்வதற்கான ஆவணம் Ex.W15 to W21 நாங்கள் எதிர்மனுதாரருக்கு அனுப்பிய, நேர்முக தேர்வுக்கான அட்டைகளை இணைத்துள்ளோம். Ex.W15 to W21 கடிதத்தில் எதிர்மனுதாரர் நிறுவனத்தால் அனுப்பியதாக குறிப்பு இல்லை.....”

From the above evidence of PW.1, it is also clear that on the side of the petitioner no documents have been exhibited to prove the fact that they were the workers of the respondent establishment and it is also learnt from above evidence that the respondent management has contended that the union members of the petitioner union are not the workers of the respondent management.

15. Further, the evidence of PW.2 in his cross examination runs as follows:

“.....இந்த 32 பேருக்கும் எதிர்மனுதாரர் நிறுவனத்தால் பணி நியமன ஆணை வழங்கப்பட்டதா என்றால் 32 பேரில் பெரும்பான்மையான பேருக்கு கொடுக்கப்படவில்லை யார் யாருக்கு கொடுக்கப்படவில்லை என்றால் என்னால் சொல்ல முடியாது. யாருக்கு பணி நியமன ஆணை கொடுக்கப்பட்டது என்று யாரையாவது



ஒருவரை குறிப்பிட்டு சொல்ல முடியுமா என்றால் இல்லை. 22 ஆண்டு ஆனதால் அது பற்றி எனக்கு ஞாபகம் இல்லை. மனுதாரர்களாகிய எங்கள் 32 பேருக்கும் பணி ஆணை கொடுக்கவில்லை என்று சொன்னால் சரிதான். இந்த 32 பேரும் எதிர்மனுதாரர் நிறுவனத்தில் பணிபுரியவில்லை என்றால் சரியல்ல. கியூரியோ சென்டர் என்பது பழைய பர்னிச்சர்களை சரி செய்து விற்பனை செய்கிற ஒரு நிலையம் என்றால் சரிதான்..... இந்த வழக்கில் சென்னை உயர்நீதிமன்றத்தில் வழக்கை திரும்ப விசாரிக்க உத்தரவிட்ட போது அதில் 32 பேரின் ஆவணத்தை தாக்கல் செய்வதற்காகத்தான் உத்தரவிடப்பட்டது என்பது எனக்கு தெரியும். இந்த வழக்கு உயர்நீதிமன்ற உத்தரவுப்படி வந்தபோது மதாசஆ 25 முதல் மதசாஆ 30 வரை தாக்கல் செய்திருக்கிறோம். அந்த ஆவணங்களுக்கும் எதிர்மனுதாருக்கும் சம்மந்தம் இல்லை என்றால் சரிதான். மதாசஆ 31-லிருந்து மதசாஆ 59 வரை உள்ள ஆவணங்கள் வெறும் அடையாள அட்டைகள் மற்றும் வாக்காளர் அட்டைகள் என்றால் சரிதான்.....”

From the above evidence, it is clear that the reference mentioned workers have not been, given any appointment order and they have not filed any documents to prove the fact that they had been working at the respondent establishment.

16. The respondent management has stated that one Vairakannu was the worker of the Sree Saiji Exports Private Limited, the sister concern of the respondent management, has raised the industrial dispute before the conciliation which was referred to this Court and the enquiry was conducted in I. D.No. 11/2001 in which this Tribunal has decided that the said Vairakannu has failed to establish that he was an employee of the respondent management Curio Centre and hence, his claim petition was dismissed by this Tribunal and the said dismissal order was exhibited as Ex.B28 before this Tribunal which would reveal the fact that after the enquiry this Tribunal has decided that the said Vairakannu who has raised the industrial dispute before the conciliation at the same time of industrial dispute raised by the petition mentioned employees, as the employee of the respondent establishment in the year 1996 seeking an order of reinstatement with backwages was dismissed by this Court. Furthermore the respondent management have accepted that they have one sister concern as Sree Saiji Exports Private Limited who alleged to have done the work of the respondent management as a contract. These petitioner union members even failed to establish that they have been served at the said Sree Saiji Exports Private Limited as a workers and no

document is exhibited before this court that they had been in service at the said Sree Saiji Exports Private Limited as a contractual workers to do the work of the respondent establishment and no document is exhibited that these reference mentioned workers were working at the said Sree Saiji Exports Private Limited and furthermore, since the petitioner have not filed any document for their date of employment and the salary particulars and other particulars whether they were working as permanent worker or temporary or casual and they have also failed to even prove the fact that they have served at the respondent management and worked as a workmen for about 240 days in the year preceding their termination to infer that they are the permanent workers of the respondent management and therefore the petitioner union has totally failed to establish that the reference mentioned members of the petitioner union are the workers of the respondent management as well as the sister concern of the respondent.

17. Furthermore, the learned counsel for the petitioner pointed out that the respondent has utilized the said M/s. Sree Saiji Exports Private Limited for getting work of the employees as the contractual labours and the said contract is sham and nominal and that therefore, as the respondent establishment is the principal employer, the respondent management is liable to give employment to the members of the petitioner union. On this aspect the documents and evidence are perused which would go to show that absolutely there is no piece of evidence that the members of the petitioner union were in service also at the said Sree Saiji Exports Private Limited and hence, the plea of the petitioners that the contract between the respondent establishment and the said Sree Saiji Exports Private Limited is sham and nominal is not sustainable. On the other hand, it is established by the respondent that only three persons were employed at their concern by filing their attendance registers and registers mentioned under the ESI Act and that therefore, the petitioner union has failed to establish their case that they have been terminated from service while they were in employment at the respondent establishment and hence, it is just and necessary to hold that the industrial dispute raised by the petitioner union before the Conciliation Officer over the non-employment is to be declared as unjustified and no relief can be granted to the petitioner union and hence, the claim petition filed by the petitioner union is liable to be dismissed.

18. In the result, the industrial dispute raised by the petitioner union is dismissed. No cost.

Dictated to the stenographer, transcribed by her; corrected and pronounced by me in the open court on this 30th day of June 2017.

**G. THANENDRAN,**  
Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

*List of petitioner's witnesses:*

PW.1 — 17-03-2016— R. Damodaran

PW.2 — 22-03-2017 —R. Manivannan

*List of petitioner's exhibits:*

Ex.A1 — 03-06-1996 —Copy of the Telegram sent by the petitioner trade union to the Labour Officer (Conciliation with the telegraphic receipt.

Ex.A2 — 04-06-1996— Copy of the notice of enquiry of the Labour Officer (Conciliation) to the petitioner trade union.

Ex.A3 — 02-07-1996 —C o p y o f t h e representations of the workers R. Velmurugan, S. Natarajan and K. Ramadoss for reinstatement in service to the respondent.

Ex.A4 — 19-07-1996 — C o p y o f t h e representation of the petitioner trade union to the respondents.

Ex.A5 — 06-12-1996 — Copy of the failure report of the Labour Officer (Conciliation).

Ex.A6 — — — Copy of the enquiry proceedings.

Ex.A7 — 22-11-1999— Copy of the notification.

Ex.A8 — 02-06-1996— C o p y o f t h e advertisement appeared in the Daily Thanthi given by the respondent calling for applications from carpenters and carpenter helpers.

Ex.A9 — 07-08-1996— Copy of the article appeared in Dina Malar Daily, regarding the arrest of the petitioners along with union leaders.

Ex.A10— — — Copy of the Form-A application for registration of trade union.

Ex.A11— — — Copy of the Certificate of Registration of the petitioner trade union.

Ex.A12— 23-05-1996— Copy of the letter from the petitioner trade union informing elected office bearers to the respondent management.

Ex.A13— 28-05-1996— Copy of the letter of the petitioner trade union to the respondent.

Ex.A14— — — Copy of the three nos. of letters and three nos. of covers addressed to certain employees by the respondent management.

Ex.A15— 27-06-1996— Copy of the Interview card sent to the worker P. Balaraman by the respondent.

Ex.A16— 27-06-1996— Copy of the Interview Card sent to the worker A. Asokan by the respondent.

Ex.A17— 27-06-1996— Copy of the Interview Card sent to the worker S. Aridass by the respondent.

Ex.A18— — — Copy of the Interview Card sent to the worker N. Krishnan by the respondent.

Ex.A19— 11-12-1997— Copy of the Interview Card sent to the worker A. Asokan by the respondent.

Ex.A20— 04-12-1997— Copy of the Interview Card sent to the worker K. Purushothaman by the respondent.	Ex.A35— 17-08-2011 — Copy of Aadhaar Card of Tamilselvan.
Ex.A21— 23-12-1997 — Copy of the Interview Card sent to the worker A. Asokan by the respondent.	Ex.A36— 08-03-2011 — Copy of Aadhaar Card of Karunakran.
Ex.A22— — — Copy of the positive print photograph of M/s. Sree Saiji Exports Private Limited.	Ex.A37— 05-08-2011— Copy of Aadhaar Card of Manivannan.
Ex.A23— 26-12-1995 — Copy of the letter issued by the respondent.	Ex.A38— 24-10-2000 — Copy of Aadhaar Card of Murugan @ Velmurugan.
Ex.A24— 05-11-1996 — Copy of the letter issued by the Labour Department.	Ex.A39— — — Copy of Aadhaar Card of Dhandapani.
Ex.A25— 26-02-2007— Copy of the resolution passed by the General body meeting.	Ex.A40— 01-09-2013— Copy of Aadhaar Card of Ariputhiri.
Ex.A26— 31-08-2015 — Copy of the Annual returns for the year-2014.	Ex.A41— 02-02-2013— Copy of Aadhaar Card of D. Baskar.
Ex.A27— 16-12-2016— Copy of the Annual returns for the year-2015.	Ex.A42— 29-03-2001— Copy of Voter ID Card of Baskar @ Sukumaran.
Ex.A28— — — Current letter head for the petitioner trade union.	Ex.A43— 20-11-2011 — Copy of Aadhaar Card of Suresh.
Ex.A29— 05-07-1996 — Copy of Registration Certificate of Petitioner trade union.	Ex.A44— 18-08-2011— Copy of Aadhaar Card of Raja.
Ex.A30— — — Copy of Affiliation Certificate of the petitioner trade union.	Ex.A45— 18-08-2011— Copy of Aadhaar Card of Murugan.
Ex.A31— — — Copy of Aadhar Card of Sakthisivam.	Ex.A46— 19-07-2011 — Copy of Aadhaar Card of Palani @ Pazanivel.
Ex.A32— 07-08-2011 — Copy of Aadhaar Card of Elumalai.	Ex.A47— 19-07-2011 — Copy of Aadhaar Card of Arulprakasam.
Ex.A33— 18-12-2011— Copy of Aadhaar Card of Designu @ Arumugam.	Ex.A48— 10-11-1994— Copy of Voter I.D Card of Sankar @ Ravichandran.
Ex.A34— 27-12-2011— Copy of Aadhaar Card of Velankanni @ Manimaran.	Ex.A49— 10-11-1994— Copy of Voter I.D Card of Mani @ Dhandapani.
	Ex.A50— 19-12-2011— Copy of Aadhaar Card of Kumaran.
	Ex.A51— 29-11-2011 — Copy of Aadhaar Card of Xavier @ Francis Xavier.
	Ex.A52— 23-09-2011— Copy of Aadhaar Card of Mohan.
	Ex.A53— 16-11-1994 — Copy of Voter I.D Card of Sandanaraj,
	Ex.A54— 04-01-2012— Copy of Aadhaar Card of Anbazhagan.
	Ex.A55— 08-11-2011— Copy of Aadhaar Card of Elangovan @ Elango.

- Ex.A56— 08-08-2011— Copy of Aadhaar Card of Ramamurthy.
- Ex.A57— 23-09-2011— Copy of Aadhaar Card of Vinayagam.
- Ex.A58— 19-07-2016 — Copy of Aadhaar Card of Raji @ Susaimaryanathan.
- Ex.A59— 11-11-2011 — Copy of Aadhaar Card of Raja @ Krishnan.

*List of respondent's witness:*

- RW.1 — 04-05-2017— L. Muthukumaran

*List of respondent's exhibits:*

- Ex.B1 — July, 1996 — Copy of the register of employment May, 1998 relating to the respondent organization.
- Ex.B2 — April, 2000 — Copy of the attendance December, 2000 of the respondent firm.
- Ex.B3 — 11-06-1998 — Copy of the registration certificate or renewal thereof relating to respondent firm with the Labour Officer ( E n f o r c e m e n t ) , Pondicherry.
- Ex.B4— — — Copy of the certificate of registration with the Central Sales Tax Office.
- Ex.B5— — — Copy of the certificate of registration in Form-D1 issued by the Deputy Commercial Tax Officer, Pondicherry.
- Ex.B6— — — Copy of the complaint given by the respondent before the D'Nagar Police Station, Pondicherry.
- Ex.B7— — — Copy of the complaint given by the respondent before the Odiansalai police station, Pondicherry.
- Ex.B8 — 01-08-1996— Copy of the letter given by the petitioner trade union to the respondent seeking reinstatement to service.

- Ex.B9 — 01-08-1996 — Copy of complaint given by the respondent management to the Superintendent of Police (North).

- Ex.B10— 01-08-1996— Copy of the complaint given by the respondent before the Grand Bazaar Police Station, Pondicherry.

- Ex.B11— 20-08-1996— Copy of the letter given by the respondent management to the Labour Officer (Conciliation).

- Ex.B12— 26-08-1996— Copy of the letter given by the respondent management to the Labour Officer (Conciliation).

- Ex.B13— 06-12-1996 — Copy of the failure report.

- Ex.B14— — — Copy of the plaint filed by the respondent management before the IADM Court, Pondicherry in O.S. No. 1677/1996.

- Ex.B15— — — Copy of the certificate of Incorporation of the company Shree Saiji Exports Private Limited with the registrar of companies, Pondicherry.

- Ex.B16— — — Copy of the permanent Registration certificate issued by the Industries Department, Pondicherry in favour of Shree Saiji Exports Private Limited.

- Ex.B17— — — Copy of certificate issued by the Industries Department, Government of Pondicherry in favour of Shree Saiji Exports Private Limited.

Ex.B18— — — Copy of Form-I issued by the Pondicherry Municipality of Shree Saiji Exports Private Limited.

Ex.B19— — — Copy of certificate of registration in Form-B by the Commercial Tax Office in favour of Shree Saiji Exports Private Limited.

Ex.B20— — — Copy of certificate of registration in Form- DI by the Commercial Tax Office in favour of Shree Saiji Exports Private Limited.

Ex.B21— — — Copy of the register showing the members of the ESI of the respondent firm.

Ex.B22— — — Copy of the register of wages of the respondent firm from December, 1995 to November, 1996.

Ex.B23— 13-04-1996— Copy of the work order issued by the respondent to one R. Lakshmanan.

Ex.B24— 25-04-1996— Copy of the work order issued by the respondent to one R. Lakshmanan.

Ex.B25— 02-05-1996— Copy of the work order issued by the respondent to one Durai.

Ex.B26— 13-05-1996— Copy of the work order issued by the respondent to one Pitchai.

Ex.B27— 15-05-1996— Copy of the work order issued by the respondent to one Durai.

Ex.B28— 14-02-2003— Copy of the Award in ID. No. 11/2001.

Ex.B29— 14-07-2008 — Copy of the Judgment in O.S. No. 23/2007.

Ex.B30— 14-07-2008— Copy of the Decree in O.S. No. 23/2007.

Ex.B31— 01-08-1996— Copy of letter to Registrar of Trade Union.

Ex.B32— Dec.1995- — Copy of Register of 1996. Wages.

Ex.B33—13-04-1996 — Copy of Work Order.

Ex.B34—25-04-1996 — Copy of Work Order.

Ex.B35—13-05-1996 — Copy of Work Order.

Ex.B36—02-05-1996 — Copy of Work Order.

Ex.B37—15-05-1996 — Copy of Work Order.

Ex.B38— 2016 — Statement under Form-I & V.

Ex.B39— 2015 — Statement under Form-I & V.

Ex.B40— 2014 — Statement under Eorm-I & V.

Ex.B41— 2013 — Statement under Form-I & V.

Ex.B42— 2012 — Statement under Form-I & V.

Ex.B43— 2011 — Statement under Form-1 & V.

Ex.B44— 2010 — Statement under Form-I & V.

Ex.B45— 2009 — Statement under Form-I & V.

Ex.B46— 2008 — Statement under Form-I & V.

Ex.B47— 2007 — Statement under Form-I & V.

Ex.B48— 2006 — Statement under Form-I & V.

Ex.B49— 2005 — Statement under Form-I & V.

Ex.B50— 2004 — Statement under Form-I & V.

Ex.B51— 2003 — Statement under Form-I & V.

Ex.B52— 2002 — Statement under Form-I & V.

Ex.B53— 2001 — Statement under Form-I & V.

Ex.B54— 2000 — Statement under Form-I & V.

**G. THANENDRAN,**  
Presiding Officer,  
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